



March 18, 2005

ENGROSSED SENATE BILL No. 518

DIGEST OF SB 518 (Updated March 16, 2005 12:45 pm - DI 52)

Citations Affected: IC 14-8; IC 14-12; IC 32-30; IC 36-7.

Synopsis: Forestry issues. Specifies that certain activities of a forestry operation are not a public or private nuisance. Entitles a forestry operation that successfully defends a nuisance action to reasonable costs and attorney's fees incurred to defend the action. Provides that local ordinances making forestry operations a nuisance are void. Encourages units to recognize the needs of forestry in future growth. Repeals and relocates the definition of "unit of local government".

Effective: July 1, 2005.

**Weatherwax, Young R, Bray,
Heinold, Lewis, Riegsecker,
Hershman, Dillon**

(HOUSE SPONSORS — FRIEND, GRUBB, LEONARD)

January 18, 2005, read first time and referred to Committee on Agriculture and Small Business.

February 10, 2005, amended, reported favorably — Do Pass.

February 15, 2005, read second time, ordered engrossed.

February 16, 2005, engrossed.

February 17, 2005, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Natural Resources.

March 17, 2005, reported — Do Pass.

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ES 518—LS 7776/DI 77+



March 18, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 518

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-8-2-289 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 289. "Unit of local
3 government",

4 ~~(1)~~ for purposes of IC 14-12-1, ~~has the meaning set forth in~~
5 ~~IC 14-12-1-3; and~~

6 ~~(2)~~ for purposes of IC 14-22-10, **and IC 14-23-1** means a:

7 ~~(A)~~ **(1)** county;

8 ~~(B)~~ **(2)** city;

9 ~~(C)~~ **(3)** town; or

10 ~~(D)~~ **(4)** township;

11 located in Indiana.

12 SECTION 2. IC 32-30-6-1.5 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2005]: **Sec. 1.5. As used in this chapter, "forestry operation"**
15 **includes facilities, activities, and equipment used to plant, raise,**
16 **manage, harvest, and remove trees on private land. The term**
17 **includes site preparation, fertilization, pest control, and wildlife**

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1 **management.**

2 SECTION 3. IC 32-30-6-3 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this
4 chapter, "locality" **means the following:**

5 (1) For purposes of section 9 of this chapter, ~~means~~ the specific
6 area of land upon which an:

7 (A) agricultural operation; or

8 (B) industrial operation;

9 is conducted. ~~and~~

10 (2) For purposes of section 10 of this chapter, ~~means~~ the
11 following:

12 (A) The specific area of land upon which a public use airport
13 operation is conducted.

14 (B) The airport imaginary surfaces as described in
15 IC 8-21-10-8.

16 **(3) For purposes of section 11 of this chapter, the specific area**
17 **of land upon which a forestry operation is conducted.**

18 SECTION 4. IC 32-30-6-7 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) An action to
20 abate or enjoin a nuisance may be brought by any person whose:

21 (1) property is injuriously affected; or

22 (2) personal enjoyment is lessened;

23 by the nuisance.

24 (b) A civil action to abate or enjoin a nuisance may also be brought
25 by:

26 (1) an attorney representing the county in which a nuisance exists;

27 or

28 (2) the attorney of any city or town in which a nuisance exists.

29 (c) A county, city, or town that brings a successful action under this
30 section (or IC 34-1-52-2 or IC 34-19-1-2 before their repeal) to abate
31 or enjoin a nuisance caused by the unlawful dumping of solid waste is
32 entitled to recover reasonable attorney's fees incurred in bringing the
33 action.

34 **(d) A forestry operation that successfully defends an action**
35 **under this section is entitled to reasonable costs and attorney's fees**
36 **incurred in defending the action.**

37 SECTION 5. IC 32-30-6-11 IS ADDED TO THE INDIANA CODE
38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2005]: Sec. 11. (a) **This section does not apply if a nuisance**
40 **results from the negligent operation of a forestry operation.**

41 **(b) For purposes of subsection (d), a forestry operation is**
42 **considered to be in continuous operation if the locality supports an**

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actual or a developing timber crop.

(c) A forestry operation that:

- (1) existed before a change in the land use or occupancy of land within one (1) mile of the boundaries of the locality; and
- (2) would not have been a nuisance before the change in land use or occupancy;

is not a private or public nuisance.

(d) A forestry operation that conforms to generally accepted forestry management practices and that has been in continuous operation is not a private or public nuisance as a result of any of the following:

- (1) A change in the ownership or size of the forestry operation.
- (2) Enrollment in a government forestry conservation program.
- (3) Use of new forestry technology.
- (4) A visual change due to removal of timber or vegetation.
- (5) Normal noise from forestry equipment.
- (6) Removal of timber or vegetation from a forest adjoining the locality.
- (7) The proper application of pesticides and fertilizers.

SECTION 6. IC 36-7-2-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10. An ordinance of a unit of local government that:**

- (1) makes a forestry operation (as defined in IC 32-30-6-1.5) a nuisance; or
- (2) provides for an abatement of a forestry operation as a:
 - (A) nuisance;
 - (B) trespass; or
 - (C) zoning violation;

under this chapter is void.

SECTION 7. IC 36-7-4-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 201.** (a) For purposes of IC 36-1-3-6, a unit wanting to exercise planning and zoning powers in Indiana must do so in the manner provided by this chapter.

(b) The purpose of this chapter is to encourage units to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end:

- (1) that highway systems be carefully planned;
- (2) that new communities grow only with adequate public way, utility, health, educational, and recreational facilities;
- (3) that the needs of agriculture, **forestry**, industry, and business

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1 be recognized in future growth;

2 (4) that residential areas provide healthful surroundings for family
3 life; and

4 (5) that the growth of the community is commensurate with and
5 promotive of the efficient and economical use of public funds.

6 (c) Furthermore, municipalities and counties may cooperatively
7 establish single and unified planning and zoning entities to carry out
8 the purpose of this chapter on a countywide basis.

9 (d) METRO. Expanding urbanization in each county having a
10 consolidated city has created problems that have made the unification
11 of planning and zoning functions a necessity to insure the health,
12 safety, morals, economic development, and general welfare of the
13 county. To accomplish this unification, a single planning and zoning
14 authority is established for the county.

15 SECTION 8. IC 14-12-1-3 IS REPEALED [EFFECTIVE JULY 1,
16 2005].

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SENATE MOTION

Madam President: I move that Senators Bray, Heinhold, Lewis and Young R be as coauthors of Senate Bill 518.

WEATHERWAX

SENATE MOTION

Madam President: I move that Senator Riegsecker be added as coauthor of Senate Bill 518.

WEATHERWAX

SENATE MOTION

Madam President: I move that Senator Hershman be added as coauthor of Senate Bill 518.

WEATHERWAX

SENATE MOTION

Madam President: I move that Senator Young R be removed as coauthor of Senate Bill 518.

YOUNG R

SENATE MOTION

Madam President: I move that Senator Young R be added as second author of Senate Bill 518.

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COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture and Small Business, to which was referred Senate Bill No. 518, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 12 through 17.

Delete page 2.

Page 3, delete lines 1 through 5.

Page 3, line 10, delete "trees." and insert "**trees on private land.**".

Page 4, line 10, delete "if:" and insert "**if**".

Page 4, line 11, delete "(1)".

Page 4, line 12, delete "crop; or" and insert "**crop.**".

Page 4, run in lines 10 through 12.

Page 4, delete lines 13 through 14.

Page 4, line 37, delete "A unit must do the following before adopting an" and insert "**An ordinance of a unit of local government that:**

(1) makes a forestry operation (as defined in IC 32-30-6-1.5) a nuisance; or

(2) provides for an abatement of a forestry operation as a:

(A) nuisance;

(B) trespass; or

(C) zoning violation;

under this chapter is void."

Page 4, delete lines 38 through 42.

Page 5, delete lines 1 through 4.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 518 as introduced.)

NUGENT, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senator Dillon be added as coauthor of Engrossed Senate Bill 518.

WEATHERWAX

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred Senate Bill 518, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

HOFFMAN, Chair

Committee Vote: yeas 11, nays 0.

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